APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

[Filed March 31, 2004]

Case No. CV02-256-N-EJL

KATHY BLIESNER,

Plaintiff,

vs.

COMMUNICATION WORKERS OF AMERICA,

and

VERIZON NORTHWEST, INC.,
(formerly GTE Northwest Inc.)

Defendants.

ORDER

Pending before the Court in the above-entitled matter are: Union Defendant Communication Workers of America's ("CWA") motion for summary judgment (Docket No. 36), Defendant Verizon Northwest Inc.'s ("Verizon") motion for summary judgment (Docket No. 40), Defendant Verizon's motion to strike portions of Bliesner's Affidavit (Docket No. 58), Plaintiff Kathy Bliesner's ("Bliesner") motion to amend her affidavit (Docket No. 60) and Bliesner's motion to strike portions of the affidavits of Underwood and Sully (Docket No. 65). Also pending are certain motions filed by Defendants related to the trial of the above-entitled matter.

Having fully reviewed the record, the Court funds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that

the decisional process would not be significantly aided by oral argument, these matters shall be decided on the record before this Court without oral argument.

Factual Background

Plaintiff Kathy Bliesner was employed by Defendant Verizon and was also a member of-the union, Defendant CWA. Verizon, formerly GTE Northwest Incorporated ("GTE"), had in place at during the course of Plaintiffs employment a collective bargaining agreement ("CBA"). The CBA expired on September 16, 1995, hut the parties agreed to continue the terms and conditions of 1992-1995 CBA in full force and effect during the relevant time of Plaintiff's employment with Verizon.

Plaintiff began working for Verizon (then know as GTE) in 1969 and had held various positions at various locations during her employment with Verizon. Several other positions were the result of "bumping." The CBA provides for reductions in force by Verizon. When a reduction in force occurs, employees with seniority may exercise "bumping" rights in order to get another position if their current position is being eliminated. An employee may bump into a position if the employee has the qualifications to perform the duties associated with the position or can easily acquire such qualifications with one week of training. When the 1992-1995 CBA was negotiated, Verizon included language in the CBA that matched the language and approach of bumping rights in the CBA with its other union the International Brotherhood of Electrical Workers ("IBEW Agreement"). This added language in the union agreement is where the requirement of only one week of training to acquire the necessary qualifications for the position an employee is trying to "bump" into comes from.

Due to a reduction in force in December of 1995, Ms. Bliesner was laid off from her Analytical Assistant position in

Coeur d'Alene, Idaho. Plaintiff submitted her application to bump into an Analytical Assistant position in the Moscow, Idaho Facilities Assignment Center ("FAC"). The duties of the Analytical Assistant position in Coeur d'Alene were different than duties at the Moscow FAC duties. It is undisputed the duties at the Moscow FAC[1] required:

1) paying bills and reporting expenses using an established code system;

2) entering payroll information;

3) maintaining employee information records on the Horizon system;

4) using telemail;

5) drafting company correspondence;

6) using Lotus 1-2-3 to develop and enter information on spreadsheets;

7) ordering and maintaining inventory on the Service Express System ("SES");

8) making line assignments using internal systems, Mechanized Assignment Records Keeping ("MARK") and Service Order Distribution System ("SODA");

9) performing work processing tasks with WordPerfect; and

10) tracking employee vacation, overtime and sick time.

Plaintiff admits that she did not possess all of the qualifications necessary for the position she desired to bump into, but she maintains she could learn the necessary skills in one

[1] The description of the requisite job duties were prepared prior to the reduction hi force by the prior incumbent to the Moscow FAC Analytical Assistant position and. Plaintiff acknowledged she has no reason to believe the above listing of duties is incorrect.

week for most skills and in a very short time for the other required skills.

The supervisor for the Moscow position, Pete Spellman, interviewed Plaintiff. Mr. Spellman decided based on Ms. Bliesner's answers, she was not qualified to bump into the position. A bump denial form was completed indicating the reasons for her denial: Plaintiff's skills and experience were deficient in her working knowledge and experience with (1) ordering supplies via SES; (2) processing and coding of departmental and employee expense vouchers; (3) updating of EIR's; (4) performance reviews; (5) Human Resources practices; and (6) MARK/SODA systems used to compile employee statistical information.

Plaintiff filed a grievance related to the bump denial. Verizon denied the first step of the grievance process in December 1995. During the three-step grievance process, Jeannie Sully, Service Center Manager—FAC and Union Representative Darle Ferians conducted a second interview of Ms. Bliesner. While Plaintiff does not remember the interview, Verizon again concluded Ms. Bliesner was not qualified for the Moscow FAC Analytical Assistant position. The three-step grievance procedure resulted in Ms. Bliesner's grievance being denied by Verizon in March 1996.

In April 1996, the CWA union provided written notice to Verizon requesting arbitration of the grievance. An application for an arbitration panel must be made by the CWA. In 1998, Plaintiff asked what was delaying the arbitration. The CWA union representative responded by letter in 1999 indicating the CWA union had decided not to pursue the grievance to arbitration. In April 1999, Plaintiff appealed the CWA's decision not to arbitrate her bump denial. In 2000 the CWA Executive Board determined the grievance should proceed to arbitration.

The grievance was arbitrated in October of 2001. An evidentiary hearing was held. No evidence was offered by the union's counsel regarding the five year delay in arbitrating the grievance. On December 7, 2001, the arbitrator dismissed the grievance as untimely. The CWA union filed two motions for reconsideration. The motions for reconsideration were denied.[2]

On June 7, 2002, Plaintiff filed her complaint in federal court alleging Verizon violated the terms of the CBA when it denied her application to bump into the Moscow position and the CWA union violated its duty of fair representation. The action is pursuant to § 301 of the Labor Management Relations Act, 29 U.S. C. § 185(a). Plaintiff seeks injunctive relief compelling Verizon to reinstate Plaintiff to her former position (with back pay and benefits), general damages and punitive damages. Verizon and the CWA union deny the allegations of Plaintiff.

Motion to Amend Affidavit of Bliesner

Plaintiff seeks to amend her affidavit (Docket No. 51) based on alleged typographical errors by the secretary handling the word processing relating to the affidavit for good cause shown, the motion is granted. The Court will consider the proposed amended affidavit of Ms. Bliesner attached as an exhibit to the Affidavit of Plaintiff s counsel (Docket No. 62) for purposes of ruling on the pending motions for summary judgment. Plaintiffs counsel is directed to file with the

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[2] Exhibit N to the Declaration of Marla Henken, Docket No. 45, indicates the first motion for reconsideration was denied in a letter dated February 8, 2002. Exhibit 0 to the same declaration is a letter from the arbitrator denying the second request for reconsideration and is dated January 22, 2002. The Court does not know if the denial of the second motion was actually February 22, 2002 and or if the second motion was considered prior to the first motion. Regardless, both motions for reconsideration were denied by the arbitrator.

Court forthwith a signed, original of the proposed amended affidavit attached to counsel's own affidavit.

Motions for Summary Judgment

1. Standard of Review

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Rule 56 provides, in pertinent part, that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

The Supreme Court has made it clear that under Rule 56 summary judgment is mandated if the non-moving party fails to make a showing sufficient to establish the existence of an element which is essential to the non-moving party's case and upon which the non-moving party will bear the burden of proof at trial. *See, Celotex Cow v. Catrett*, 477 U.S. 317, 322 (1986). If the nonmoving party fails to make such a showing on any essential element, "there can be no genuine issue of material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* at 323.[3]

Moreover, under Rule 56, it is clear that an issue, in order to preclude entry of summary judgment, must be both "material" and "genuine." An issue is "material" if it affects the

[3] *See also*, Rule 56(c) which provides, in part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set Forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

outcome of the litigation. An issue, before it may be considered "genuine," must be established by "sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir. 1975) (*quoting First Nat'l Bank v. Cities Serv. Co. Inc.*, 391 U.S. 253, 289 (1968)). The Ninth Circuit cases are in accord. *See e.g., British Motor Car Distrib. v. San Francisco Automotive Indus. Welfare Fund*, 882 F.2d 371 (9th Cir. 1989).

According to the Ninth Circuit, in order to withstand a motion for summary judgment, a party

> (1) must make a showing sufficient to establish a genuine issue of fact with respect to any element for which it bears the burden of proof; (2) must show that there is an issue that may reasonably be resolved in favor of either party; and (3) must come forward with more persuasive evidence than would otherwise be necessary when the factual context makes the non-moving party's claim implausible.

Id. at 374 (citation omitted). Moreover, the Ninth Circuit has held that where the moving party meets its initial burden of demonstrating the absence of any genuine issue of material fact, the nonmoving party must "produce 'specific facts showing that there remains a genuine factual issue for trial' and evidence 'significantly probative' as to any [material] fact claimed to be disputed." *Steckl v. Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983) (citing *Ruffin v. County of Los Angeles*, 607 F.2d 1276, 1280 (9th Cir. 1979)).

The Ninth Circuit Court of Appeals has acknowledged that in recent years the Supreme Court, "by clarifying what the nonmoving party must do to withstand a motion for summary judgment, has increased the utility of summary judgment." *California Architectural Bldg. Prods, Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). As the

Ninth Circuit has expressly stated: "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." *Id.*

In addressing the application of the "Summary Judgment Test," the Ninth Circuit Court of Appeals has specifically explained that:

> A "material" fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. The materiality of a fact is thus determined by the *substantive law* governing the claim or defense. Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.

T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Assoc., 809 F.2d 626, 630 (9th Cir. 1987) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (emphasis added).

Of course, when applying the above standard, the court must view all of the evidence in a light most favorable to the non-moving party. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 255 (1986); *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir. 1992).

2. Analysis

Both Defendants have filed motions for summary judgment. Defendants argue the Complaint combines two causes of action commonly referred to as a hybrid § 301/fair representation claim, *DelCostello v. International Brotherhood of Teamsters and United Steelworkers of America, AFL-CIO-CLC*, 462 U.S. 151, 165 (1983). In order to prevail on a hybrid claim, the Plaintiff must prove both Defendants violated their duties, *i.e.*, Verizon violated the CBA and the CWA union violated its duty of fair representation. Failure to prove both claims, entitles both defendants to summary judgment in their favor. *Id., see also Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-71 (1976), *Slevira v. Western*

Sugar Company, 200 F.3d 1218 (9th Cir. 2000). Plaintiff argues she does not need to prevail on both claims, but this argument is misplaced as it conflicts with the holdings of the applicable cases.

The Court will begin with the claim against Verizon. Did Verizon violate the terms oldie CBA when it denied Ms. Bliesner's application to bump? As to this issue, the Court finds there are no material issues of genuine fact and summary judgment should he granted in favor of Verizon. In. order to determine whether the CBA was violated, the Court reviews the language of the labor agreement at issue. The labor agreement is interpreted like any contract and the Court will apply the plain and literal meaning to the words used in the labor agreement. *Harris v. Warner & Swasey Company*, 729 F.Supp. 1146 (N.D. Oh. 1989). The Court will not consider extrinsic evidence unless it finds the labor agreement to the ambiguous. *Capa v. Wiseman*, 469 F. Supp. 437 (N.D. Ca. 1979).

Article 14 of the COEUR D'ALENE addresses reduction in forces. There is no dispute regarding the fact a reduction in force occurred in this case. The CBA states:

Section 14.5.1:

> The notified employee has the qualifications to perform the new job or can easily acquire the qualifications in accordance with Section 14.5.2.

Section 14.5.2:

> Employees who have previously held the job or performed all or a substantial portion of the duties required by the position will be provided with refresher training on-the-job for up to one (1) week. Employees who have no related experience hut the requirements of the job are such that they can bc readily learned without formal training shall bc given up to one

> (1) week of on-the-job training. The Company shall have the burden of proof for lack of qualifications for bump to an employee's current classification. The employee shall have the burden of proving qualifications for other than the employee's current classification. Employees exercising the above bumping rights who fail to satisfy job requirements after four (4) weeks on the job shall be laid off without further bumping rights. Layoff allowance shall be paid in accordance with Section 14.10 and 14.14.
>
> . . .
>
> Section 14.10
>
> Employees who bump shall be given a four (4) week period to satisfy the job requirements. During the four (4) week period, job performance will he evaluated. When mutually agreed between the Union and the Company the four (4) week period may be extended.

The Court finds the language in the CBA agreement to be unambigous. Moreover, the language had consistently been interpreted by arbitrators to the IBEW Agreement to create a. requirement that an employee applying to bump into a position must be qualified to work the tasks of the incumbent employee or be able to acquire the necessary qualification one week of refresher training. *See, e.g., Sheldahl, Inc.*, 78 Lab. Arb. (BNA) 706 (1982), *Dentsply International, Inc.*, 85 Lab. Arb. (BNA) 24 (1985), and *Greenville Steel Cr Co.*, 85 Lab. Arb. (BNA) 75 (1985). If allowed to bump (which did not happen in this case), the employee is still only allowed one week of training and then is evaluated in four weeks to see if they are meeting the requirements of the job.

Therefore, the question becomes was the bump denial by Verizon proper. Specifically, was Ms. Bliesner qualified for the Moscow position and/or could she acquire the necessary skills in one week? It is undisputed Ms. Bliesner was not

qualified for the position without further training. Ms. Bliesner admits in her affidavit (Docket No. 62) she had no training or experience of any kind in "MARK and SODA systems, the processing of expense vouchers, updating EIR's and performance reviews."

The deposition testimony of Ms. Bliesner (attached to the Declaration of Marla Henken, Docket No. 45.) indicates in addition to not having any experience with the MARK and SODA systems, the processing of expense vouchers, updating EIR's and performance reviews, she had limited experience with Lotus 1-2-3, had not used telemail,[4] she was unfamiliar with the basic functions of SES, limited experience with WordPerfect, she had not generated different kinds of company correspondence since the 1980s, she had no experience handling absence control procedures and she had no experience processing Family Medical Leave Act requests.

The affidavit of Jeannie Sully, Dispatch Resource Center Manager for Verizon's Pacific—Cascade Division and supervisor of Mr. Spellman (Moscow supervisor), Docket No. 43, indicates duties of the Moscow position were different than the current duties of Ms. Bliesner when she applied for the bump. Also, Ms. Sully indicates the training time for SODA is a one-day basic training class. The training time for a working knowledge of the MARK systems is a formal class that lasts 3 to 4 weeks and such skills are essential for the Moscow position. The training time for learning the system to pay bills and process expense vouchers is a few weeks.

Ms. Bliesner states in her affidavit "the skills necessary to perform said tasks could easily be learned by me in one week or less. I felt I was qualified to perform the duties." She also

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[4] In Ms. Bliesuer's affidavit in Support of Plaintiffs Reply [Response] to Motion to Strike, Docket No. 64, she states she misunderstood the deposition question regarding telemail and that she is familiar with TMAIL which is the same program as telemail.

states in her supplemental affidavit filed in response to the motion to strike portions of her affidavit "I was and am certain that I could have learned the skills within one week or less."

Defendants challenge the conclusory statements made by Plaintiff that she could be trained in one-week when no evidence is given to support this statement and she does not dispute that MARK training takes 3 to 4 weeks. The Court agrees that Ms. Bliesner's statements that she could have been trained in one week or less are conclusory, self-serving and do not create a material issue of genuine fact to survive summary judgment.

Rule 56(e) states in part:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as other wise provided in this rule, must set forth *specific facts showing that there is a genuine issue for trial.*

"Only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment." *Bevene v. Coleman See. Services, Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988). Affiant in this case has no personal knowledge that she could be trained in less time than asserted is necessary by Verizon. Rather, she believed she could learn all the skills in one week. This "belief" does not appear to be based on any evidence other than Ms. Bliesner had been an employee for a long period of time, therefore, she felt she could learn the necessary skills. While the Court does not doubt that Ms.

Bliesner could have eventually learned the necessary skills, the facts are undisputed that the time required to learn all of the undisputed essential and necessary skills for the Moscow position would exceed one week and the one-week time limit was a condition that must be satisfied before a bump request could he approved for the Moscow FAC position. Ms. Bliesner's affidavit statements that she believed she could learn in one week all the skills, without more (such as evidence the MARK training only takes a week instead of 3-4 weeks or other employees had completed such training in one week, or that SODA could be learned in less than one day, etc.), does not provide the specific facts required under Rule 56(e) necessary to create a basis for her "belief" The statements are conclusory and insufficient as a matter of law to survive summary judgment on this issue of whether she could be trained within one week.

Ms. Bliesner also stated in her affidavit that other employees have been allowed to bump into positions requiring more than one-weeks of training. She added a specific name, Jena Sherich, in her affidavit in support of her response to the motion to strike portions of her affidavit. The Court finds this isolated example, which is not supported by detailed facts of what skills Ms. Sherich did not possess and/or how long such skills took to acquire to he unpersuasive. The union contract allows that a hump request may be denied if the Company establishes the person cannot he trained in one-week for the position. The Company as provided undisputed evidence in this particular case the necessary training would take a minimum of 3 to 4 weeks. Having denied the bump request, the four week time period allowed for a person to get up to speed after one week of training in sections 14.5.2 and 14.10 does not apply even though it may have applied to Ms. Sherich's transfer.

Because the applicable language of the union contract is unambiguous and the evidence here this Court is undisputed

that Ms. Bliesner could not have been trained for the position she was requesting to bump into within one-week, the Court finds there is not genuine issue of material fact regarding the alleged violation of the CBA by Verizon. As a matter of law, based on the undisputed facts and reviewing the facts in a light most favorable to Plaintiff, Verizon did not violate the CBA and is entitled to summary judgment.

Because the Court finds Plaintiff has failed to survive summary judgment as to her claim against Verizon, her claim against the union also fails and the union is entitled to summary judgment in its favor. The Court need not address the union's alleged failure to timely process the request to arbitrate as there is no merit of Plaintiff's underlying claim of being improperly denied her request to bump.

Other Pending Trial Motions

Based on the Court's ruling on the motions for summary judgment, the other pending motions filed by Defendants which relate to the trial are moot.

ORDER

Being fully advised in the premises, the Court hereby orders;

1. Defendant Communication Workers of America's motion for summary judgment (Docket No. 36) is GRANTED.
2. Defendant Verizon Northwest Inc.'s motion for summary judgment (Docket No. 40) is GRANTED.
3. Defendant Verizon's motion to strike portions of Bliesner's Affidavit (Docket No. 5S) is GRANTED IN PART consistent with this Order.
4. Plaintiff Kathy Bliesner's motion to amend her affidavit (Docket No. 60) is GRANTED.
5. Plaintiff Bliesner's motion to strike portions of the affidavits of Underwood and Sully (Docket No. 65) is DENIED,

6. Defendant Verizon's motion to continue trial (Docket No. 70) and to bifurcate liability and damages (Docket No. 79) are MOOT.

7. Motions in limine filed by Defendants (Docket Nos. 74, 76, 78, 81) are MOOT.

SO ORDERED this 31st day of March, 2004.

/s/ Edward J. Lodge
EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Idaho
March 31, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 2:02-cv-00256

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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___ John C. Coughenour
___ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 3-31-04

By: /s/ [Illegible]
(Deputy Clerk)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

[Filed July 1, 2004]

Case No. CV02-256-N-EM

KATHY BLIESNER,

Plaintiff,

vs.

COMMUNICATION WORKERS OF AMERICA,

and

VERIZON NORTHWEST, INC.,
(formerly GTE Northwest Inc.)

Defendants.

ORDER

Pending before the Court in the above-entitled matter is Plaintiffs Motion for Reconsideration (Docket No. 88). This Court entered an Order and Judgment dismissing Plaintiff's claims on March 31, 2004 (Docket Nos. 86 and 87). The motion, for reconsideration pursuant to Fed. R. Civ. P. 59 was filed on April 9, 2004. The Court finds the motion was timely filed.

Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without oral argument.

The Ninth Circuit has identified three reasons sufficient to warrant a court's reconsideration of a prior order: (1) an intervening change in controlling law; (2) the discovery of new evidence not previously available; and (3) the need to correct clear or manifest error in law or fact, to prevent manifest injustice. *School Dist. No. 1J v. ACandS Inc.*, 5 17.3d 1255, 1263 (9th Cir. 1993). Upon demonstration of one of these three grounds, the movant must then come forward with "facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Donaldson v. Liberty Mut. Ins. Co.*, 947 F. Supp. 429, 430 (D. Haw. 1996).

Plaintiff argues this Court erred in determining there were no genuine issues of material facts on whether Verizon violated the Collective Bargaining Agreement ("CBA") and in determining Plaintiff could not proceed against the Union, notwithstanding the granting of summary judgment in favor of Verizon. Defendants responded Plaintiff has not met the legal standard to support reconsideration and Defendant Verizon requests sanctions.

The Court respectfully agrees with Defendants that Plaintiff has failed to establish any of the three recognized reasons to support reconsideration. First, Plaintiff does not argue there has been an intervening change in law. Second, Plaintiff does not offer any new evidence for the Court to consider. Third, while the Plaintiff disagrees with this Court's analysis, Plaintiff has failed to establish via binding precedent the need to "correct clear or manifest error in law or fact, to prevent manifest injustice." Absent these showings, reconsideration is improper.

As to the Court's finding of no material genuine issue of material fact on the contract claim against Verizon, Plaintiff argues the Court failed to consider the fact that Plaintiff was a long-time employee and that her statement that she could have learned the requisite skills in one week should allow her to survive summary judgment on whether the CBA was

violated. This argument ignores the Court's analysis set forth on pages 8-10 of the March 31, 2004. Order wherein the Court acknowledges Ms. Bliesner's long-term employment and her statement in her affidavit, hut finds the length of employment and other work experience were insufficient to refute the undisputed fact that certain necessary computer training for the position she desired to hump into took at least 3 weeks. Plaintiffs argument in the motion for reconsideration is not a new argument and such argument was previously rejected by this Court.

As to the Court's finding that Plaintiff filed a hybrid claim that required her to prevail against both Verizon for violating the CBA and the Union for breaching its duty of lair representation, the Court finds it applied the correct legal standard. Plaintiff is simply trying to re-argue a legal argument already presented to this Court. Let there be no misunderstanding, while Plaintiff may elect to sue only one party (either the employer or the union) or *both* the employer and the union, Plaintiff has the burden to prove both a breach of contract and a breach of the fair representation duty. The Supreme Court explained this burden in the case cited by this Court in its Order of March 31, 2004, *DelCostello v. Int'l Brotherhood of Teamsters*, 462 U.S. 151, 164-165 (1983):

> [Since] the two claims are inextricably interdependent . . . [t]o prevail against either the company or the Union, . . . [employee plaintiffs]must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating a breach of-duty by the Union, . . . [citations omitted]. The employee may, if he chooses, sue one defendant and Pot the other, but the case he must prove is the same whether lie sues one, the other or both.

Having found Plaintiff failed to prove her case against the company in the case at bar, the Court properly dismissed the claim against the union. Plaintiff's renewed argument based

on a quote in *Breininger v. Sheet Metal Workers Int'l Assn. Local Union 6*, 493 U.S. 67, 84, n.8 (1989) continues to be misplaced and is therefore rejected by this Court.

Being fully advised in the premises, the Court hereby orders the motion for reconsideration (Docket No. 88) is DENIED. However, the Court finds sanctions are not appropriate in this particular case.

SO ORDERED this 29th day of June, 2004.

/s/ Edward J. Lodge
EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Idaho
July 1, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 2:02-cv-00256

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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_√_ Judge Edward J. Lodge
___ Chief Magistrate Judge Larry M. Boyle
_√_ Magistrate Judge Mikel H. Williams

Visiting Judges:
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___ Judge John C. Coughenour
___ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 7-1-04

By: /s/ [Illegible]
(Deputy Clerk)

APPENDIX C

FOE PUBLICAITON
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed Nov. 13, 2006]

No. 04-35702
D.C. No. CV-02-00256-EJL

KATHY BLIESNER,
Plaintiff-Appellant,
v.
THE COMMUNICATION WORKERS OF AMERICA; VERIZON NORTHWEST INC., fka GTE Northwest Incorporated,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted
May 4, 2006—Portland, Oregon

Filed September 13, 2006

Before: A. Wallace Tashima and William. A, Fletcher, *Circuit Judges*, and Louis H. Pollak,* *Senior District Judge*.

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* The Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

OPINION

W. FLETCHER, *Circuit Judge*:

Plaintiff Kathy Bliesner brings a hybrid fair representation § 301 suit against her union and her employer, alleging that her union breached its duty of fair representation in violation of the National Labor Relations Act and that her employer breached its collective bargaining agreement ("CBA") in violation of § 301(a) of the Labor Management Relations Act. The district court granted summary judgment against Bliesner on the ground that she had failed to establish that her employer breached the CBA. The district court did not address the question of whether the union breached its duty of fair representation.

Bliesner contends on appeal that the district court should not have reached the question of her employer's obligation under the CBA without first addressing the question of her union's duty of fair representation. We disagree. Bliesner had to prevail on both questions in order to survive the motion for summary judgment. We hold that the district court was not required to decide the questions in any particular order, and that it properly granted summary judgment against Bliesner after holding that the employer had not breached the CBA.

We also reject Bliesner's other claims of error.

I. Background

Bliesner began working for Verizon (then GTE) in 1969. She held various positions throughout her employment with the company. The Communication Workers of America ("CWA") represented Verizon employees. In 1995, Bliesner was laid off from her position as an Analytical Assistant in Coeur d'Alene, Idaho, pursuant to a reduction in force.

Under the terms of the governing 1992-1995 CBA, a senior employee could exercise "bumping" rights against a junior employee after a reduction in force, so long as the bumping

employee could be trained for the new position within the requisite time. Section 14.5.2 of the CBA provided:

> Employees who have previously held the job or performed all or a substantial portion of the duties required by the position will be provided with refresher training on-the-job for up to one (1) week. Employees who have no related experience but the requirements of the job are such that they can be readily learned without formal training shall be given up to one (1) week of on-the-job training.

Bliesner sought to "bump" into an Analytical Assistant position in Verizon's Facilities Assignment Center in Moscow, Idaho. It is undisputed that this position required knowledge of (1) paying bills and reporting expenses using an established code system; (2) entering payroll information; (3) maintaining employee information records; (4) using telemail; (5) drafting company correspondence; (6) using Lotus 1-2-3 to develop and enter information into spreadsheets; (7) ordering and maintaining inventory on the Service Express System; (8) making line assignments using the internal systems known as MARK and SODA; (9) performing word processing tasks with WordPerfect; and (10) tracking employee vacation, overtime, and sick time.

In her deposition, Bliesner admitted that she had no experience with paying bills or invoices under Verizon's billing codes and systems; had only limited knowledge of how to process expense reports; had never used the Horizon computer system, which maintains employee information; had never processed employee performance reviews; had never used telemail; had only limited knowledge of Lotus 1-2-3; had no familiarity with the basic functions of the Service Express System; had no knowledge of the MARK or SODA systems; had only very limited experience with WordPerfect; and had never handled or processed other employees' Family Medical Leave Act requests or expense reports. Bliesner later

stated in an affidavit that she had experience with Tmail, which is the same as telemail.

Peter Spellman, the supervisor of the Moscow facility, interviewed Bliesner for the position and concluded that she was not qualified for the bump. On November 21, 1995, a bump denial form was issued. The bump was denied on the ground that due to Bliesner's lack of experience and knowledge, she "would require substantial formal and or on the job training."

Bliesner, represented by CWA, filed a grievance. Grievances were handled under the CBA in a three-step process. At the completion of the third step, on March 19, 1996, Verizon denied Bliesner's grievance. Under the CBA, arbitration could be requested within thirty days of the completion of the three-step process. CWA requested arbitration on Bliesner's behalf on April 5, 1996.

Almost three years later, on March 25, 1999, CWA told Bliesner that it had decided not to pursue her claim to arbitration because it did not think the claim would be successful. Bliesner appealed the decision within the union. As a result of the appeal, CWA agreed to proceed to arbitration. It assigned an attorney to her case in November 2000. In December 2001, the arbitrator denied Bliesner's claim on the ground that CWA had not timely pursued her grievance in arbitration.

Bliesner then filed a hybrid fair representation/§ 301 complaint against CWA and Verizon in federal district court. She alleged (1) that CWA had breached its duty of fair representation, and (2) that Verizon had breached the CBA. The district court granted summary judgment to both CWA and Verizon, holding that Bliesner had not shown that Verizon had breached the CBA in denying her bumping request. Because it concluded there had been no breach of the CBA by Verizon, the district court did not address the question of whether CWA had breached its duty of fair representation.

Bliesner timely appealed to this court.

II. Standard of Review

We review de novo a district court's grant of summary judgment. *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004). We must determine whether the district court properly applied the relevant substantive law and whether, viewing the evidence in the light most favorable to the nonmoving party, there are any genuine issues of material fact. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004). We may affirm on any ground supported by the record. *Enlow v. Salem-Keizer Yellow Cab Co.*, 389 F.3d 802, 811 (9th Cir. 2004).

III. Discussion

Bliesner objects to the grant of summary judgment on several grounds. We address each in turn.

A. Order of Deciding Questions in a "Hybrid" Suit

A union owes a duty of fair representation to those it represents, and an employer must honor the terms of a CBA to which it is a party. An aggrieved party may bring a hybrid fair representation/ 301 suit against the union, the employer, or both. In order to prevail in any such suit, the plaintiff must show that the union and the employer have both breached their respective duties.

The Supreme Court has described a hybrid fair representation/§ 301 suit as follows:

> Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rests on § 301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. Yet the two claims are inextricably interdependent. To prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that

> their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.

Del Costello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 164-65 (1983) (citations and internal quotations omitted; alteration in the original). Whether the defendant is the union or the employer, the required proof is the same: The plaintiff must show that there has been both a breach of the duty of fair representation and a breach of the CBA. *Id.*

Bliesner contends that the district court erred by deciding that Verizon did not breach the CBA without first deciding whether CWA breached its duty of fair representation. It is true that a breach of a duty of fair representation by the union is a necessary prerequisite to a successful suit against the employer for a breach of the CBA. *See, e.g., Buford v. Runyon*, 160 F.3d 1199, 1201 (8th Cir. 1998) ("To prevail on her claim for breach of the collective bargaining agreement, Buford must show, as a prerequisite, that the Union breached its duty of fair representation."); *Vadino v. A. Valey Engr's*, 903 F.2d 253, 261 (3d Cir. 1990) ("The unfair representation claim is the necessary 'condition precedent' to the employee's suit."). It is also true that a hybrid fair representation/§ 301 suit cannot go to trial without some showing that the union has violated its duty of fair representation. *See Herman v. United Bhd. of Carpenters & Joiners of Am., Local Union No. 971*, 60 F.3d 1375 (9th Cir. 1995) (allowing hybrid suit to go forward when plaintiff could survive a summary judgment motion on issue of fair representation).

But nothing requires the district court to decide the fair representation question first. *See, e.g., Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992) (affirming the dismissal of a hybrid suit where the district court held that the employer had not breached the CBA without reaching the fair representation issue); *White v. Anchor Motor Freight, Inc.*, 899 F.2d 555, 557-58 (6th Cir. 1990) (same). In

this case, CWA and Verizon moved for summary judgment on two grounds—that Bliesner had failed to show either that CWA had violated its duty of fair representation or that Verizon had breached the CBA in violation of § 301. Evidently believing that the CBA § 301 question was easier to resolve, the district court held that Verizon had not violated the CBA. Having held that there was no violation of the CBA, the district court then granted summary judgment to both defendants on the ground that Bliesner had not prevailed on an essential element of her suit. Deciding the CBA question first is not merely permissible. It is also a normal and entirely sensible procedure frequently followed by a court confronted with two potentially dispositive questions, one of which is easier to resolve.

We therefore conclude that the district court did not err by resolving Bliesner's § 301 claim that her employer breached the CBA, and by granting summary judgment without addressing Bliesner's fair representation claim against the union.

B. Other Objections

Bliesner raises numerous other objections to the district court's decision. Some of them are moot in light of our holding that the district court acted properly in deciding the CBA § 301 question without reaching the duty of fair representation question. Others are overlapping and partially redundant. Reduced to their essentials, Bliesner has the following remaining objections.

1. Construction of the CBA

Bliesner contends that the district court misconstrued the CBA when it concluded that § 14.5.2 unambiguously required that an employee applying to bump into a position must be able to learn the necessary skills of the new job with either a week of formal refresher training, or a week of informal on-the-job training. We agree with the district court that the text of the CBA is unambiguous in stating that any neces-

sary training—whether formal refresher training or on-the-job training—must be achievable within a week.

2. Motions to Strike Portions of Affidavits

Bliesner contends that the district court erred in striking portions of her affidavit submitted in support of her motion for summary judgment, and in failing to strike portions of affidavits from two Verizon employees, Sully and Underwood. Under Federal Rule of Civil Procedure 56(e), affidavits must be based on personal knowledge. We review the district, court's ruling for an abuse of discretion. *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1038 (9th Cir. 2003).

It is clear from its order that the district court only struck those portions of Bliesner's affidavit concerning her own personal belief that she could be trained in one week. By her own admission, Bliesner was entirely unacquainted with many of the skills for which training would have been required. For example, there is evidence in the record that the MARK program—which was a necessary part of the new job—requires a three to four week training class. Bliesner stated in her deposition that she had no knowledge of the MARK system. Given Bliesner's lack of knowledge of the MARK system, the district court did not abuse its discretion in striking, for lack of personal knowledge, the portion of her affidavit stating that she could learn it in one week.

By contrast, the affidavits of Sully and Underwood were based upon their first-hand knowledge of the necessary skills for the job Bliesner sought, as well as the time needed to obtain those skills. The district court did not abuse its discretion in refusing to strike their affidavits or portions thereof.

3. Genuine Issues of Material Fact

Bliesner contends that there were genuine issues of material fact as to whether she could be trained within one week. We disagree. Verizon introduced evidence showing

that Bliesner lacked the necessary skills for the job she sought, and that she could not obtain those skills with one week of formal refresher training or on-the-job training. Bliesner sought to introduce evidence to the contrary by means of statements in her affidavits, but we have just held, *supra*, that the district court did not abuse its discretion in striking those statements for lack of personal knowledge.

4. Motion for Reconsideration

Finally, Bliesner contends that the district court erred in denying her motion for reconsideration. We review for an abuse of discretion a district court's denial of a motion for reconsideration. *Sheet Metal Workers Int'l Ass'n Local Union No. 359 v. Madison*, 84 F.3d 1186, 1192 (9th Cir. 1996). We hold that there was no abuse of discretion.

Conclusion

We hold that in a hybrid fair representation/§ 301 suit, a district court need not address a duty of fair representation claim before addressing a CBA § 301 claim. The district court committed no error in granting summary judgment against Bliesner. We affirm in all respects.

AFFIRMED.